

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34

QUINNIPIAC COLLEGE

Employer

and

SECURITY DEPARTMENT MEMBERSHIP

Petitioner

Case No. 34-RC-1717

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,¹ the undersigned finds:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.²

¹ Following the close of the hearing, the Petitioner filed a motion to reopen the record for the purpose of receiving into evidence a complete copy of the Employer's policy and procedure manual and copies of policy and procedure memoranda. Pursuant to Section 102.65(e)(1) of the Board's Rules and Regulations, inasmuch as the Petitioner does not claim that such evidence is newly discovered or that it became available only since the close of the hearing, the motion is hereby denied.

² Contrary to the Employer's contention, the record reveals that the Petitioner is an organization in which employees participate and which exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment and conditions of work. The record further reveals that the Petitioner only admits guards into membership, and that it is not affiliated directly or indirectly with any organization which admits to membership employees other than guards. Accordingly, I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act, and that it is qualified to represent guards within the meaning of Section 9(b)(3) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.³

5. The Employer is a private university offering undergraduate education at its sole facility located in Hamden, Connecticut. The Petitioner seeks to represent a unit of approximately 32 full-time and regular part-time guards employed in the Employer's Security Department, including dispatchers, traffic control officers, assistant supervisors, and shift supervisors. Although otherwise in accord as to the appropriateness of the unit, the Employer, contrary to the Petitioner, would exclude the two regular shift supervisors and four assistant supervisors who regularly act as shift supervisors on the ground that they are supervisors within the meaning of the Act or managerial employees. There is no history of collective bargaining regarding any of the petitioned-for employees.

Although the record contains no specific description of the Employer's facilities, it appears to consist of numerous academic buildings, residence halls and parking lots which are utilized by approximately 2600 students and 700 employees. The Security Department operates 24 hours a day, 7 days a week, on a three shift per day schedule: 7:30 a.m. to 4:00 p.m. (day shift), 4:00 p.m. to 12:00 p.m., and 12:00 p.m. to 8:00 a.m.

Primarily responsible for the operation and overall supervision of the Security Department is Chief of Security and Safety Donell Spears and Assistant Chief of Security and Safety John Twining. Spears works Monday through Friday from 7:00 a.m. to 4:00 p.m. Twining works Tuesday through Saturday from 4 p.m. to 12 p.m. Neither Spears or Twining perform any work in the field. Their duties are primarily administrative in nature and include such matters as planning, budgeting, setting policy and procedures, and dealing directly with students, parents, faculty, and the public. In addition, while they are on duty Spears and Twining are "in command" of their respective shifts. When not on duty, both will be contacted by telephone by the shift supervisors or acting shift supervisors when the latter are required to deal with non-routine situations.

Reporting directly to Spears and Twining are the disputed shift supervisors, who are in command of their shift in the absence of Spears or Twining. Robert Poppendieck is the

³ In light of my finding below that the Employer's shift supervisors and acting shift supervisors are not supervisors within the meaning of Section 2(11) of the Act, the Employer's motion to dismiss the petition on the grounds that the shift supervisors and acting shift supervisors participated in the formation of the Petitioner and the filing of the petition is hereby denied.

shift supervisor on the 4 p.m. to 12 p.m. shift Monday through Friday, and James Moniello is the shift supervisor on the 12 p.m. to 8 a.m. shift Tuesday through Saturday. On the day shift Monday through Friday, the shift supervisor's duties are assumed by assistant supervisors Frank Wielis and Joseph Benson, with Wielis responsible for the north campus and Benson responsible for the south campus. Finally, assistant supervisor Elmer Sulkowski serves as the acting shift supervisor for the 4 p.m. to 12 p.m. shift on Saturday and Sunday, and assistant supervisor James Gahrn serves as the acting shift supervisor on the 12 p.m. to 8 a.m. shift on Sunday and Monday. It is undisputed that acting shift supervisors have the same responsibilities and authority during their shift as the regular shift supervisors.

The record reveals that on the day shift, the bulk of the Security Department's work involves traffic and parking control. In this regard, three traffic control officers and the two assistant supervisors who assume the shift supervisor duties, in conjunction with a dispatcher who is located in the Security Department office, regulate the traffic flow in and around the campus and monitor the parking lots. On the remaining shifts, however, the bulk of the work involves security issues related to the buildings, residence halls and parking lots. Such work is performed by one or two assistant supervisors and the shift supervisor, also in conjunction with a dispatcher.⁴ This work involves patrolling all buildings to ensure that they are locked; swiping a card through "data acquisition units" in the course of their patrol; responding to requests for assistance and other emergencies or alarms in the residence halls; contacting and dealing with the appropriate authorities (e.g., police or fire department, gas company or facilities employees, and residence hall officials) in the event of an emergency or other unusual situation; coordinating the evacuation of dormitories when warranted; working in conjunction with residence hall officials when special incidents arise therein, such as the search of a students room or the confiscation of illegal items; and preparing "case incident reports" resulting from service calls or other interactions with

⁴ There are an unspecified number of occasions on all shifts when additional personnel are required to handle special events, such as open houses, "admitting student days", concerts and graduation. On those occasions, approximately 5 to 8 employees could be assigned per shift, all of whom would report to the designated shift supervisor. In addition, Thursday, Friday and Saturday nights tend to be the busiest shifts due to increased numbers of visitors to the campus and more activities in the residence halls, which occasionally requires the assignment of additional personnel who report directly to the shift supervisor.

students and the public. All employees assigned to a shift, including the shift supervisors and acting shift supervisors, may perform any or all of the above-described functions.

There is no evidence that the shift supervisors or acting shift supervisors play any role in the initial assignment and scheduling of employees. Rather, during the course of a shift, it is the dispatcher who directs employees to respond to a particular incident or service call. However, the shift supervisor or acting shift supervisor is ultimately responsible for the assignment of all employees to cover particular situations that arise in the course of a shift, and may override the dispatcher's assignment. Thus, when the shift supervisor or acting shift supervisor reports to the scene of an incident, he takes the lead in handling the situation. In such circumstances he may reassign or redeploy other security department employees, taking into consideration the employees' experience and capability to respond to a particular incident, as well as other campus security needs and requirements. In this regard, however, I note that there are typically only a few employees assigned to each shift, and that the dispatcher automatically sends a backup officer to every call. More significantly, the record reveals that the shift supervisors and acting shift supervisors response to particular situations is guided primarily by the Employer's "many" established policies and procedures, which are apparently maintained in a "dispatchers book".⁵ Thus, when confronted with a situation covered by the Employer's established policies and procedures, the shift supervisor or acting shift supervisor will act in accordance with those policies and procedures. If the situation is not covered or is otherwise "non-routine", the shift supervisor or acting shift supervisor will contact Spears or Twining for instructions and guidance on how to proceed.

The shift supervisors and acting shift supervisors are responsible for reviewing all of the aforementioned "case incident reports" generated by security department employees in the course of their respective shifts. In this regard, the record indicates that a shift supervisor was disciplined because an assistant supervisor and dispatcher had a vehicle towed away in a manner which was contrary to the Employer's correct towing policy.

The shift supervisors and acting shift supervisors have the authority to allow employees to leave work early in the event of illness or other emergency, and employees have been disciplined for failing to advise their shift supervisor that they were leaving work.

⁵ Although the dispatchers book was not introduced into the record, its existence and use is undisputed.

However, there is no evidence that the shift supervisor can refuse to permit an employee to leave work early. All other requests for time off, as well as requests by employees to “swap shifts”, must be approved by Spears or Twining. If employees call in sick or do not show up for work, the shift supervisors or acting shift supervisors are responsible for insuring adequate shift coverage by either redistributing the work among the remaining employees, finding someone who is willing to stay over from the prior shift, or calling someone else in to work. Although on occasion a shift supervisor or acting shift supervisor may require an employee to remain on duty at the conclusion of his shift on an overtime basis in order to provide proper coverage, it appears that this is only done with the approval of Spears or Twining.

With regard to the discipline of employees, the record reflects that the shift supervisors and acting shift supervisors may “informally counsel” employees regarding proper work procedures. In the event that such “informal counseling” is unsuccessful, they so advise Spears or Twining and may recommend that the employee be disciplined. The record is silent as to the results or effectiveness of such recommendations. It does indicate, however, that although they are also responsible for advising Spears or Twining of employee misconduct, no employee may be disciplined without an independent investigation conducted under the direction of Spears or Twining.

The only evaluation system maintained by the Employer involves probationary employees. In this regard, during each employee’s initial probationary period, a one-page “evaluation report” is completed on a weekly basis jointly by the shift supervisor or acting shift supervisor and Spears.⁶ Although Spears relies primarily upon the shift supervisor or acting shift supervisor in preparing the evaluation form, the record indicates that he also solicits the views of other non-supervisory employees regarding the job performance of probationary employees.

⁶ Part A of the form requires the rating of the employee as “satisfactory” or “unsatisfactory” in six categories (i.e., quality of work, quantity of work, personality, personal appearance, attendance and dependability). Part B of the form requires an “overall evaluation” by checking one of the following categories: definitely unsatisfactory, substandard but making progress, doing an average job, above average, or outstanding. Part C, which is only completed prior to the ending date of the probationary period, requires a yes or no answer to the following question: Do you recommend that this employee be continued as a regular employee? In the event that the answer to Part C is no, then Part D asks whether the employee should be “released” and the “justification” therefore.

There is no record evidence indicating that the shift supervisors have the authority to hire, transfer, suspend, layoff, recall, promote, discharge, or reward other employees, or adjust their grievances, or effectively recommend such actions.

Shift supervisors receive approximately \$3.00 per hour more than assistant supervisors. When assistant supervisors serve as acting shift supervisors, they receive an additional \$1.00 per hour. All other terms and conditions of employment are the same for all employees in the petitioned-for unit.

Based upon the foregoing and the record as a whole, I find that the shift supervisors and acting shift supervisors are not supervisors within the meaning of Section 2(11) of the Act. More specifically, while the shift supervisors and acting shift supervisors may assign and direct the work of other security department employees, such authority is routine in nature or guided strictly by the Employer's established policies and procedures, and does not require the exercise of independent judgment. *Security Guard Service, Inc.*, 154 NLRB 8 and 154 NLRB 33 (1965)(shift supervisor); *Merchants Police, Inc.*, 137 NLRB 525 (1962)(working sergeant); *Chevron Shipping Co.*, 317 NLRB 379 (1995)(watch officers); *Leland Stanford Jr. University*, 194 NLRB 1210, 1214 (fire captains)(1972); *S.D.I. Operating Partners, L.P., Harding Glass Division*, 321 NLRB 111 (1996)(leadman).⁷ As for their involvement in the preparation of the probationary employee evaluation forms, there is no evidence that this has directly affected the job status of any employee. See *Quality Chemical, Inc.*, 324 NLRB 328, 330 (1997); *Arizona Public Service Co.*, 310 NLRB 477, 480 (1993); *Nymed, Inc. d/b/a Ten Broeck Commons*, 320 NLRB 806, 813, n. 12 (1996). As for their role in relaying information concerning employee misconduct or poor work performance, given the fact that higher management reviews and independently investigates the misconduct and determines the appropriate disciplinary action, I find that the disputed individuals are essentially conduits of information and that their responsibility is

⁷ *Greenbrier Hotel*, 216 NLRB 721 (1975), *Pioneer Hotel and Gambling Hall*, 276 NLRB 694 (1985), *Giant Food, Inc.*, 252 NLRB 1308 (1980), and *The Wackenhut Corp.*, 226 NLRB 1085 (1976), cited by the Employer in its post-hearing brief, are clearly distinguishable from the instant case. In *Greenbrier*, shift leaders were found to be supervisors where they regularly supervised 6-8 guards, there was a regular absence of higher authority, and they could authorize overtime. In *Pioneer*, a security lieutenant was found to be a supervisor where he scheduled employees, granted sick leave and overtime, issued oral reprimands, and effectively recommended the hiring and discharge of employees. In *Giant Food*, a security lieutenant was found to be a supervisor where he performed no guard work, prepared work schedules, initialed time cards, and effectively recommended discipline. Finally, in *Wackenhut*, the security lieutenants were found to be supervisors where they issued verbal reprimands and warnings to employees.

merely reportorial in nature. See *Peco Energy Co.*, 322 NLRB 1074, 1083 (1997); *McCulloch Environmental Services, Inc.*, 306 NLRB 565, 568 (1992); *Rest Haven Living Center, Inc. d/b/a Rest Haven Nursing Home*, 322 NLRB 210, 212 (1996). The fact that the shift supervisors and acting shift supervisors are at times the highest Security Department authority at the Employer's facility, and that they receive a higher rate of pay, are secondary indicia which, in the absence of statutory supervisory indicia, are insufficient to establish supervisory status. See *St. Francis Medical Center-West*, 323 NLRB 1046, 1047 (1997); *McCulloch Environmental Services, Inc.*, supra, 306 NLRB at 566. Finally, I note that a finding of supervisory status of the two regular shift supervisors and the four acting shift supervisors would create an extremely low and unrealistic ratio of supervisors to unit employees on a typical shift, but that a finding of non-supervisory status would not create an unreasonably high ratio. See *Beverly Enterprise Ohio d/b/a Northcrest Nursing Home*, 313 NLRB 491, 498-499 (1993).⁸

With regard to the Employer's contention that the shift supervisors and acting shift supervisors are managerial employees, there is no evidence to support such a conclusion. Rather, the record reveals that the shift supervisors and acting shift supervisors do not formulate or effectuate management policies by expressing and making operative the decisions of the Employer, nor do they have discretion in the performance of their jobs independent of the Employer's established policies. *Northeast Utilities Service Corp. v. N.L.R.B.*, 35 F.3d 621, 147 LRRM 2361, 2364-2365 (1st Cir. 1995), enf. 313 NLRB No. 65 (1994)(unpublished); *North Arkansas Electric Cooperative, Inc.*, 185 NLRB 550 (1970); *S.S. Joachim & Anne Residence*, 314 NLRB 1191, 1194, fn. 6 (1994).

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time security department employees, including dispatchers, traffic control officers, assistant supervisors, acting shift supervisors, and shift supervisors employed by the Employer at its Hamden, Connecticut facilities; but excluding all other employees, and professional employees and supervisors as defined in the Act.

⁸ More specifically, a finding of supervisory status would result in 3 supervisors for 4 employees on the day shift, 2 supervisors for 2 employees on the 4 to 12 shift, and 1 supervisor for 2 employees on the 12 to 8 shift. However, a finding of non-supervisory status results in the following reasonable ratios of supervisory to non-supervisory personnel: about 1 to 6 on the day shift; about 1 to 3 on the 4 to 12 shift, and no on-site supervision for 3 employees on the 12 to 8 shift.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notices of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. These eligible employees shall vote whether or not they desire to be represented for collective bargaining purposes by Security Department Membership.

To ensure that all eligible employees have the opportunity to be informed of the issues in the exercise of their statutory rights to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision and Direction of Election, the Employer shall file with the undersigned, an eligibility list containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional office, 280 Trumbull Street, 21st Floor, Hartford, Connecticut 06103, on or before May 17, 1999. No extension of time to file these lists shall be granted except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by May 24, 1999.

Dated at Hartford, Connecticut this 10th day of May, 1999.

/s/ Peter B. Hoffman

Peter B. Hoffman, Regional Director
Region 34
National Labor Relations Board

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